

SENATE BILL No. 337

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-3; IC 7.1-4-4-3; IC 7.1-5-10-12.

Synopsis: Direct wine sales. Changes the amount of wine a farm winery can sell annually from 500,000 to 1,000,000 gallons of wine. Provides that a holder of a wine dealer's permit is eligible for a direct wine seller's permit. Removes requirements that before a direct wine seller (seller) may sell to a consumer: (1) the consumer must provide information in one face-to-face transaction at the seller's place of business; or (2) under certain circumstances, the consumer must provide a verified statement that the consumer is at least 21 years of age and the seller must provide information to the alcohol and tobacco commission. Amends the eligibility requirements for a direct wine seller's permit. Requires a consumer to provide the consumer's name, valid delivery address and telephone number, payment, and proof of age by a state issued driver's license or identification card, electronically or otherwise transmitted, before a seller may sell wine directly to a consumer. Requires sellers to remit to the department of state revenue all Indiana excise taxes and sales and use taxes due on the shipments made into the state quarterly. (Current law requires the sellers to remit the taxes monthly.) Allows a holder of an alcoholic beverage permit to sell or offer to sell an alcoholic beverage on credit to an individual who does not hold an alcoholic beverage permit. Makes conforming changes. Repeals provisions that: (1) require a consumer to provide certain information to a seller; (2) restrict the amount of wine a seller may direct ship in Indiana during a permit year; and (3) restrict the amount of wine a consumer may receive in a calendar year. Makes it a Class C infraction for a consumer to resell wine purchased from a holder of a direct wine seller's permit.

Effective: Upon passage.

Steele

January 14, 2008, read first time and referred to Committee on Commerce, Public Policy & Interstate Cooperation.



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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 337

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 7.1-3-12-4, AS AMENDED BY P.L.165-2006,
2 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 4. In order to be considered a "farm winery"
4 within the meaning of this title and to be eligible to receive a farm
5 winery permit, a wine-making establishment shall not annually sell
6 more than ~~five hundred thousand (500,000)~~ **one million (1,000,000)**
7 gallons of wine in Indiana, excluding wine shipped to an out-of-state
8 address.
9 SECTION 2. IC 7.1-3-12-5, AS AMENDED BY P.L.165-2006,
10 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 UPON PASSAGE]: Sec. 5. (a) The holder of a farm winery permit:
12 (1) is entitled to manufacture wine and to bottle wine produced by
13 the permit holder's farm winery;
14 (2) is entitled to serve complimentary samples of the winery's
15 wine on the licensed premises or an outside area that is
16 contiguous to the licensed premises as approved by the
17 commission if each employee who serves wine on the licensed



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premises:

(A) holds an employee permit under IC 7.1-3-18-9; and

(B) completes a server training program approved by the commission;

(3) is entitled to sell the winery's wine on the licensed premises to consumers either by the glass or by the bottle, or both;

(4) is entitled to sell the winery's wine to consumers by the bottle at a farmers' market that is operated on a nonprofit basis;

(5) is entitled to sell wine by the bottle or by the case to a:

(A) person who is the holder of a permit to sell wine at wholesale; or

(B) consumer if the holder of the farm winery permit holds a direct wine seller's permit under IC 7.1-3-26;

(6) is exempt from the provisions of IC 7.1-3-14;

(7) is entitled to advertise the name and address of any retailer or dealer who sells wine produced by the permit holder's winery;

(8) for wine described in IC 7.1-1-2-3(a)(4):

(A) may allow transportation to and consumption of the wine on the licensed premises; and

(B) may not sell, offer to sell, or allow the sale of the wine on the licensed premises;

(9) is entitled to purchase and sell bulk wine as set forth in this chapter;

(10) is entitled to sell wine as authorized by this section for carryout on Sunday; and

(11) is entitled to sell and ship the farm winery's wine to a person located in another state in accordance with the laws of the other state.

(b) With the approval of the commission, a holder of a permit under this chapter may conduct business at not more than three (3) additional locations that are separate from the winery. At the additional locations, the holder of a permit may conduct any business that is authorized at the first location, except for the manufacturing or bottling of wine.

(c) With the approval of the commission, a holder of a permit under this chapter may, individually or with other permit holders under this chapter, participate in a trade show or an exposition at which products of each permit holder participant are displayed, promoted, and sold. The commission may not grant approval under this subsection to a holder of a permit under this chapter for more than thirty (30) days in a calendar year.

SECTION 3. IC 7.1-3-13-2.5, AS AMENDED BY P.L.165-2006, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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UPON PASSAGE]: Sec. 2.5. ~~(a)~~ All premises to be used by an applicant for a wine wholesaler's permit must be described in the application for the permit and in the permit, if the permit is issued. A wine wholesaler may not keep or store wine at any place other than the premises described in the wine wholesaler's application and permit. A person who holds a wine wholesaler's permit and who also holds a beer wholesaler's permit is not disqualified from using multiple premises for the storage of wine because the person holds a beer wholesaler's permit. The holder of a wine wholesaler's permit issued under IC 7.1-4-4.1-13(c) may enter into an agreement to:

(1) locate the wine wholesaler's business within the licensed premises of a farm winery or a farm winery brandy distiller; or

(2) use goods and services provided by a farm winery or a farm winery brandy distiller;

or both.

~~(b) A direct wine seller under IC 7.1-3-26 is not considered an affiliate of a wine wholesaler for purposes of IC 7.1-3-26-7(9) for an agreement under this section.~~

SECTION 4. IC 7.1-3-26-6, AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. A seller may sell and ship wine directly only to a consumer who meets all of the following requirements:

(1) The consumer is at least twenty-one (21) years of age.

(2) The consumer has an Indiana address.

(3) The consumer intends to use wine purchased under this chapter for personal use only and not for resale or other commercial purposes.

~~(4) Except as provided in subdivision (5), the consumer has provided to the seller in one (1) initial face-to-face transaction at the seller's place of business appearing on the seller's application for a direct wine seller's permit or any locations authorized by IC 7.1-3-12-5 all the following:~~

~~(A) Name, telephone number, Indiana address, or consumer's Indiana business address.~~

~~(B) Proof of age by a state issued driver's license or state issued identification card showing the consumer to be at least twenty-one (21) years of age.~~

~~(C) A verified statement, made under penalties for perjury, that the consumer satisfies the requirements of subdivisions (1) through (3).~~

~~(5) If:~~

~~(A) before April 1, 2006, the consumer has engaged in a~~

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transaction with a seller in which the seller sold wine to the consumer and; after April 1, 2006; but before December 31, 2006; the consumer provides the seller with a verified statement; made under penalties for perjury, that the consumer is at least twenty-one (21) years of age; and

(B) the seller provides the name and Indiana address of the consumer to the commission before January 15, 2007; the seller may sell directly to the consumer in accordance with this chapter.

SECTION 5. IC 7.1-3-26-7, AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The commission may issue a direct wine seller's permit to an applicant who meets all of the following requirements:

(1) The applicant is domiciled and has its principal place of business in the United States.

(2) The applicant:

(A) is engaged in the manufacture of wine;

(B) holds a wine dealer's permit; or

(C) is engaged in the manufacture of wine and holds a wine dealer's permit.

(3) The applicant holds and acts within the scope of authority of **a wine dealer's permit to sell wine or** an alcoholic beverage license or permit to manufacture wine that is required:

(A) in Indiana or the state where the applicant is domiciled; and

(B) by the Tax and Trade Bureau of the United States Department of the Treasury.

(4) The applicant ~~qualifies with the secretary of state to do business in Indiana and in a writing filed with the commission with the applicant's application,~~ consents to the personal jurisdiction of the commission, **department of state revenue,** and the courts of Indiana **with respect to the applicant's obligation to pay and account for all Indiana excise taxes and sales and use taxes and for the applicant's compliance with the applicant's obligations under this title.**

(5) The applicant files a surety bond with the commission in accordance with IC 7.1-3-1; or deposits cash in an escrow account with the commission; in the amount required of an applicant for a vintner's permit under IC 7.1-3-1-7.

~~(6)~~ **(5)** The applicant:

(A) does not hold a permit or license to wholesale alcoholic

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beverages issued by ~~any authority;~~ **the state of Indiana;** and
 (B) is not owned in whole or in part or controlled by a person
 who holds a permit or license to wholesale alcoholic
 beverages.

(7) The applicant sells not more than five hundred thousand
 (500,000) gallons of wine per year in Indiana, excluding wine
 shipped to an out-of-state address.

(8) The applicant has not distributed wine through a wine
 wholesaler in Indiana within the one hundred twenty (120) days
 immediately preceding the applicant's initial application for a
 direct wine seller's permit or the applicant has operated as a farm
 winery under IC 7.1-3-12.

(9) The applicant is not the parent, subsidiary, or affiliate of
 another entity manufacturing any alcoholic beverage.

~~(10)~~ (6) The applicant completes documentation regarding the
 applicant's application required by the commission.

(b) The commission may issue a direct wine seller's permit to an
 applicant who:

(1) meets the requirements under subsection (a); and

(2) holds a permit issued under this title that allows the sale of an
 alcoholic beverage at retail.

SECTION 6. IC 7.1-3-26-9, AS ADDED BY P.L.165-2006,
 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 UPON PASSAGE]: Sec. 9. A direct wine seller's permit entitles a seller
 to sell and ship wine to a consumer **in Indiana** by receiving and filling
 orders that the consumer transmits by ~~electronic or mail, telephone,~~
Internet, computer, or other means if all of the following conditions
 are satisfied before the sale or by the times set forth as follows:

(1) The consumer provides the direct wine seller with the
 following:

(A) The verification required by section 6(4) of this chapter in
 an initial face-to-face transaction.

(B) Notwithstanding clause (A); if the consumer provided the
 information specified in section 6(5)(A) of this chapter after
 April 1, 2006; but before December 31, 2006; and the seller
 provides the name and Indiana address of the consumer under
 section 6(5)(B) of this chapter to the commission before
 January 15, 2007; the consumer is not required to comply with
 section 6(4) of this chapter.

(A) The consumer's name.

(B) A valid delivery address and telephone number.

(C) A credit card number, a check, or other valid payment.

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(D) Proof of the consumer's age by a state issued driver's license or identification card showing the consumer is at least twenty-one (21) years of age. The proof under this clause may be evidenced in person, by a photocopy or facsimile copy that is mailed or electronically transmitted, or by a computer scanned electronically transmitted copy.

(2) The direct wine seller meets the following requirements:

(A) Maintains for two (2) years all records of wine sales made under this chapter. If the records are requested by the commission, a direct wine seller shall:

(i) make the records available to the commission during the direct wine seller's regular business hours; or

(ii) at the direction of the commission, deliver copies to the commission.

(B) Stamps, prints, or labels on the outside of the shipping container the following: "CONTAINS WINE. SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY.".

(C) Causes the wine to be delivered by the holder of a valid carrier's alcoholic beverage permit under IC 7.1-3-18.

(D) Directs the carrier to verify that the individual personally receiving the wine shipment is at least twenty-one (21) years of age.

(E) Does not ship to any **individual** consumer more than two hundred sixteen (216) liters of wine in any calendar year.

(F) Remits to the department of state revenue ~~monthly~~ **quarterly** all Indiana excise ~~taxes and~~ sales and use taxes ~~due~~ on the shipments made into Indiana by the direct wine seller during the previous ~~month~~ **quarter**.

SECTION 7. IC 7.1-3-26-14.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 14.5. (a) A consumer who purchases wine from the holder of a direct wine seller's permit may not resell the wine.**

(b) A consumer who violates this section commits a Class C infraction.

SECTION 8. IC 7.1-3-26-15, AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15. (a) Except as provided in subsections (b) and (c), a seller who violates this chapter commits a Class A infraction.**

(b) Except as provided in subsection (d), A seller who:

(1) knowingly or intentionally violates this chapter; and

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(2) has one (1) prior unrelated conviction or judgment for an infraction under this section for an act or omission that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction; commits a Class A misdemeanor.

(c) ~~Except as provided in subsection (d),~~ A seller who:

- (1) knowingly or intentionally violates this chapter; and
- (2) has at least two (2) prior unrelated convictions or judgments for infractions under this section for acts or omissions that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;

commits a Class D felony.

~~(d) A person who violates section 6(5) of this chapter commits a Class A infraction. The commission may consider an infraction committed under this subsection in its determination of whether to renew a seller's permit.~~

SECTION 9. IC 7.1-3-26-16, AS AMENDED BY P.L.1-2007, SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. If a direct wine seller is charged under section 15 of this chapter with selling to a consumer who does not meet the requirements of section 6 of this chapter, it is a defense to the charge if the direct wine seller ~~obtained from the consumer the verified statement required under section 6(4)(C) or 6(5)(A) of this chapter and produces a copy of the verified statement.~~ **met all the requirements under section 9(1) and 9(2)(A) through 9(2)(E) of this chapter.**

SECTION 10. IC 7.1-4-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. ~~Persons Liable for Tax.~~ The wine excise tax shall be paid by the holder of a vintner's permit, a farm winery permit, a wine wholesaler's permit, **a direct wine seller's permit**, a dining car wine permit, or a boat wine permit on the alcoholic beverage to which the tax is applicable and which has been manufactured or imported by him into this state. However, the same article shall be taxed only once for wine excise tax purposes.

SECTION 11. IC 7.1-5-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. ~~Credit Sales Prohibited.~~ **(a) This section does not apply to a permittee who sells or offers to sell an alcoholic beverage to an individual who does not hold a permit under this title.**

(b) It is unlawful for a permittee to sell, offer to sell, purchase or receive, an alcoholic beverage for anything other than cash. A permittee who extends credit in violation of this section shall have no

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1 right of action on the claim. This section shall not prohibit a permittee
 2 from crediting to a purchaser the actual price charged for a package or
 3 an original container returned by the original purchaser as a credit on
 4 a sale. This section shall not prohibit a permittee from refunding to a
 5 purchaser the amount paid by the purchaser for a container, or as a
 6 deposit on a container, if it is returned to the permittee. This section
 7 shall not prohibit a manufacturer from extending usual and customary
 8 credit for alcoholic beverages sold to a customer who maintains a place
 9 of business outside this state when the alcoholic beverages are actually
 10 shipped to a point outside this state. This section shall not prohibit a
 11 distiller or a liquor or wine wholesaler from extending credit on liquor,
 12 flavored malt beverages, and wine sold to a permittee for a period of
 13 fifteen (15) days from the date of invoice, date of invoice included.
 14 However, if the fifteen (15) day period passes without payment in full,
 15 the wholesaler shall sell to that permittee on a cash on delivery basis
 16 only.

17 SECTION 12. THE FOLLOWING ARE REPEALED [EFFECTIVE
 18 UPON PASSAGE]: IC 7.1-3-26-11; IC 7.1-3-26-12; IC 7.1-3-26-14.

19 SECTION 13. **An emergency is declared for this act.**

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